

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the SIRS Appeal of
Gregory J. Smith, Personal Care
Attendant (PCA)

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATIONS**

This matter came on before Administrative Law Judge Richard C. Luis (ALJ) for a Hearing on April 18, 2012 at the Office of Administrative Hearings in St. Paul. Corrie A. Oberg, Assistant Attorney General, appeared on behalf of the Department of Human Services (Department). There was no appearance by or on behalf of Gregory J. Smith, PCA (Respondent).

The record closed on May 10, 2012, the last day for Mr. Smith to file a written response to the Department's Motion for Default.

STATEMENT OF ISSUES

1. Did the Department determine properly that Mr. Smith submitted claims to be reimbursed for services he did not provide, in violation of Minn. Stat. § 256B.064 and Minn. R. 9505.2200?¹

2. Did the Department properly suspend Mr. Smith's participation in the Minnesota Health Care Program (MHCP), pursuant to Minn. Stat. § 265B.064, subd. 1b and Minn. R. 9505.2205?

Based on the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On March 11, 2010, the Department informed Mr. Smith that it would suspend his participation as a provider (Personal Care Attendant) in the MHCP Program for a period of two years, because of the determination by its Surveillance and Integrity Review Section (SIRS) that he submitted a claim or claims for personal care services through one provider for dates and times of service that conflict with claims for other clients. Mr. Smith appealed the suspension, and this contested case process was initiated.

¹ Citations to Minnesota Rules refer to the 2009 Edition.

2. On May 16, 2011, a Second Amended Notice and Order for Prehearing Conference and Hearing (Notice) was issued in this matter. The Notice provides, at page two:

1. The Respondent's failure to appear at the hearing or any prehearing conference, may result in a finding that the Respondent is in default, that the Department of Human Service's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

3. The Notice ordered a telephone Prehearing Conference to convene on June 24, 2011. Counsel for the Department called in at the appointed hour for the Prehearing Conference, and Mr. Smith did not.

4. The telephone Prehearing Conference scheduled for June 24, 2011 was not placed on the calendar of the Administrative Law Judge. Given that circumstance, the Administrative Law Judge issued a Letter/Order on August 19, 2011. He ordered that this matter would proceed to Evidentiary Hearing, to convene at the Office of Administrative Hearings on Monday, September 19, 2011.

5. On September 19, 2011, Counsel and Witnesses appeared for the Department, and Mr. Smith appeared in person, without counsel.

6. On September 19, 2011, the parties reached an agreement to resolve the matter informally and placed that agreement on the record. Counsel for the Department drafted a Settlement Agreement, for Mr. Smith's review and signature, reflecting the agreed-upon terms, and sent it to Mr. Smith at his last known address on November 15, 2011.

7. Mr. Smith did not return the agreement or respond in any other way to the mailing of November 15, 2011.

8. On December 20, 2011, Counsel sent Mr. Smith a letter, enclosing another copy of the Settlement Agreement, and requesting that he respond by January 13, 2012, informing him that if she did not receive a response, she would request the matter be set back on for hearing.

9. Pursuant to the written request by Counsel for the Department, the Administrative Law Judge re-scheduled the Evidentiary Hearing for April 18, 2012. Mr. Smith was provided written notice of the Hearing at his last known address.

10. Mr. Smith failed to appear for the April 18, 2012 Hearing. He did not contact the Administrative Law Judge, Office of Attorney General, or the Department to seek a continuance or request any other relief.

11. Because Mr. Smith failed to appear at the Evidentiary Hearing on April 18, 2012, he is in default.

12. The allegations contained in the Notice are taken as true and incorporated by reference into these Findings of Fact.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 256B.064.

2. The Respondent was given timely and proper Notice of the Evidentiary Hearing in this matter.

3. The Department has complied with all procedural requirements.

4. Under Minn. R. 1400.0600, the Respondent is in default because of his failure to appear at the Evidentiary Hearing on April 18, 2012.

5. Under Minn. R. 1400.6000, when a party defaults, the allegations and the issues set out in a Notice and Order for Prehearing Conference and Hearing may be accepted as true and deemed proved. The Administrative Law Judge therefore deems the allegations in the Second Amended Notice and Order for Prehearing Conference and Hearing to be true.

6. Pursuant to his default, and by his failure to sign and return the Settlement Agreement reached at the initially-convened hearing on September 19, 2011, Mr. Smith is in violation of Minn. Stat. §§ 256B.064, subd. 1a. He also is in violation of Minn. R. 9505.2200 and 9505.2205.

7. It is appropriate for the Commissioner to affirm the suspension of the Respondent's participation in MHCP, which suspension he initially appealed.

8. It is appropriate to dismiss the Respondent's appeal.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATIONS

IT IS RECOMMENDED that the Commissioner of Human Services **AFFIRM** the suspension of Respondent Gregory Smith's participation in the Minnesota Health Care Program (MHCP) for a period of two years, pursuant to Minn. Stat. § 256B.064.

IT IS RECOMMENDED FURTHER that the Respondent's appeal in this matter be **DISMISSED**.

Dated: June 8, 2012

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Default

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Lucinda Jesson, Commissioner, Minnesota Department of Human Services, P.O. Box 64998, St. Paul, MN 55164-0998, telephone (651) 296-2701, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.